RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
California State Lands Commission
Attn: Title Unit
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

STATE OF CALIFORNIA
OFFICIAL BUSINESS
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SPACE ABOVE THIS LINE FOR RECORDER'S USE

A.P.N.
County: Orange

LEASE NO. PRC 6616.1

This Lease consists of this summary and the following attached and incorporated parts:

Section 1	Basic Provisions
Section 2	Special Provisions Amending or Supplementing Section 1 or 3
Section 3	General Provisions
Exhibit A	Land Description
Exhibit B	Site and Location Map
Exhibits C1-C6	Sublease Endorsements
Exhibit D	Lease Maintenance Reimbursement Agreement

SECTION 1

BASIC PROVISIONS

THE STATE OF CALIFORNIA, hereinafter referred to as Lessor acting by and through the **CALIFORNIA STATE LANDS COMMISSION** (100 Howe Avenue, Suite 100-South, Sacramento, California 95825-8202), pursuant to Division 6 of the Public Resources Code and Title 2, Division 3 of the California Code of Regulations, and for consideration specified in this Lease, does hereby lease, demise, and let to **CITY OF HUNTINGTON BEACH**, hereinafter referred to as Lessee, those certain lands described in Exhibit A hereinafter referred to as Lease Premises, subject to the reservations, terms, covenants, and conditions of this Lease.

MAILING ADDRESS: 2000 Main Street
Huntington Beach, CA 92648

LEASE TYPE: Public Agency Use

LAND TYPE: Sovereign

LOCATION: Sovereign land in the Pacific Ocean, offshore Huntington Beach, Orange County, as described in Exhibit A attached and by this reference made a part hereof.

LAND USE OR PURPOSE: The operation and maintenance of an existing public municipal pier and related concessions.

TERM: 25 years; beginning June 21, 2018; ending June 20, 2043, unless sooner terminated as provided under this Lease.

CONSIDERATION: $125 per year, with additional consideration being the public's use and benefit. Subject to modification by Lessor as specified in Paragraph 11 (b) and (c) of Section 2 – Special Provisions; and Paragraph 3(c) of Section 3 - General Provisions.

AUTHORIZED IMPROVEMENTS:

X **EXISTING:** Municipal pier and related concessions

LIABILITY INSURANCE: N/A

SURETY BOND OR OTHER SECURITY: N/A

SECTION 2
SPECIAL PROVISIONS

BEFORE THE EXECUTION OF THIS LEASE, ITS PROVISIONS ARE AMENDED, REVISED, OR SUPPLEMENTED AS FOLLOWS:

1. All future structural modifications or material changes to any of the Authorized Improvements, other than future routine repairs and maintenance, will require Commission staff's review and approval prior to commencement of construction. In the event of an urgent repair requiring immediate action, notification shall be made through Lessor's 24-hour emergency response number at (562) 590-5201.

2. Lessee acknowledges and agrees:
   a. The site may be subject to hazards from natural geophysical phenomena including, but not limited to, waves, storm waves, tsunamis, earthquakes, erosion, flooding, and sea-level rise ("climate change

effects"). The risks posed to the site from these discrete processes, and the combined, additive impacts of multiple processes are anticipated to increase in severity over the term of the lease due to the localized effects of climate change. Specifically, climate change effects could expose the public beach and pier infrastructure, to stronger and prolonged flooding events, requiring maintenance and repair beyond what is regularly needed. Adverse impacts from climate change effects on facilities within the lease area, could result in degradation of Public Trust resources and values, including water quality, recreation, and public safety. Future conditions may necessitate additional adaptation measures to increase the resiliency of the lease area to the impacts of sea-level rise and coastal climate change processes.

b. To assume the risks to the Lessee and to the property that is the subject of any Coastal Development Permit that is issued to Lessee for development on the Lease Premises, of injury and damage from such hazards in connection with the permitted development and use.

c. To unconditionally waive any claim or damage or liability against the State of California, its agencies, officers, agents, and employees for injury or damage from such hazards.

3. Lessee acknowledges that the Lease Premises are subject to the Public Trust and are presently available to members of the public for recreation, waterborne commerce, navigation, fisheries, open space, and any other recognized Public Trust uses. Lessee also agrees that any proposed construction activities and subsequent use of the Lease Premises shall not unreasonably interfere with or limit Public Trust rights and shall do so only to the extent necessary to protect public health and safety during construction activities authorized by Lessor, or when imminent threats to public health and safety are present.

4. Lessee shall provide Lessor with a copy of the updated Local Hazard Mitigation Plan (public draft circulated in March 2017) after its approval by Federal Emergency Management Agency (FEMA) and adoption by the City of Huntington Beach. Lessee shall provide Lessor with copies of any subsequent updates to the Local Hazard Mitigation Plan by January 1 of year following such update.

5. Lessee shall conduct structural and utility safety assessment inspection reports, as specified in this paragraph, during the lease term for the improvements in compliance with the American Society of Civil Engineers (ASCE), Manuals of Practice (MOP) 130 – Waterfront Facilities Inspection and Assessment, and the ASCE Standard Practice Manual 101-for Underwater Investigations. Lessee shall provide a copy of the inspection reports, including any necessary remedial action plan, to Lessor's staff for review and comment. The next inspection shall be conducted on or before December 31, 2020, and Lessee shall submit a report to Lessor within 30 days of inspection completion. Subsequent inspections and reports shall be due every five years in accordance with the same schedule and timing.

6. Lessee shall provide Lessor with an annual summary report on or before each Lease anniversary date (June 21), or a date to be mutually agreed to by Lessee and Lessor's staff. The report shall include any local monitoring information required by Lessee or other agencies or entities which relates to sea-level rise vulnerability and adaptation capacity of the Lease Premises and the facilities therein. Information shall include but is not limited to: sea-level rise and flooding vulnerability and risk assessments, updates or amendments to the Local Coastal Program, annual flooding frequency and extent, time and duration of any pier closures resulting from flooding, wave overtopping, or storm related damage, annual site photographs, schedule and nature of repair and maintenance operations, and coastal hazard remediation and removal. Pertinent information may be sourced from the Lessee itself or any other research conducted within the Lease Premises or adjacent land.

7. Lessee shall execute a reimbursement agreement with Lessor, substantially in the form as shown in Exhibit D (attached and by this reference made a part hereof), to pay for all reasonable costs and expenditures paid or incurred by the Lessor, its staff or both for review and approval of any plan or related materials required herein, including but not limited to any review or preparation of reports, documents or other actions pursuant to the California Environmental Quality Act (CEQA), plan reviews, and/or amendments. Payment by Lessee shall be in a form and manner which is determined by Lessor's staff and is consistent with the requirement of State law.

8. Lessor acknowledges that the Huntington Beach Municipal Pier is registered with U.S. National Registry of Historic Places. Therefore, notwithstanding Section 3, Paragraph 13 of this Lease, Lessee may be relieved of its obligation to remove the pier under expiration or sooner termination of this Lease, subject to the following conditions: a) the pier and all appurtenant structures are free of any liens or encumbrances; b) the pier and all appurtenant structures have undergone an above and below water inspection as specified in Section 2, Paragraph 5 of this lease; and the inspection report deems the pier and appurtenant structures to be in sound structural and safe condition with no significant defects; c) upon staff's review and concurrence of the structural inspection reports findings, the Commission at its sole discretion accepts a good and sufficient quitclaim deed for the pier and appurtenant structures from Lessee. If Lessee is released from the removal obligations pursuant to this paragraph, Lessee's insurance, indemnity, and liability obligations shall survive the expiration or early termination of this Lease, until such time, that a new operator or tenant is found for the Pier.

9. Five years prior to the expiration of this Lease, Lessee shall submit to Lessor a summary report that details resiliency planning efforts and adaptation strategies related to sea-level rise impacts within the Lease Premises. The report shall include a record of flood frequency and extent, and protective measures taken to reduce flood risk to public and visitor serving facilities within the Lease Premises and upland property. Findings from the utility safety assessment inspection report for the Huntington Beach Pier will also be summarized in the report as well as any emergency repairs made to structures located in the Lease Premises. The contents of this report shall contain sufficient detail to enable Lessor and Lessee to assess the effectiveness of these planning efforts in maintaining and enhancing the resiliency of Public Trust resources and values within the Lease Premises subject to the risks associated with sea-level rise and climate change.

10. Lessor acknowledges and agrees:

    a. By way of the Sublease Endorsement Exhibits C1through C6, attached and by this reference made a part hereof, Lessor approves the existing subleases between Lessee and the operators of the existing concessions on the Lease Premises, provided that the sublessees shall name the State of California as an additional insured insofar as their operations within the Lease Premises are concerned for all liability insurance coverage required under their respective sublease agreements.

    b. Any sublease approved by Lessor Pursuant to Subparagraph 9(a) shall be an exception to Section 3, Subparagraph 5(h) of this Lease, and to the extent commercial use of the Lease Premises is contemplated by such sublease, Lessor agrees that such commercial use shall not constitute a Default of the Lease.

11. Lessee acknowledges and agrees:

a. Prior to the execution of any subsequent sublease agreement involving the lease facilities, including but not limited to the renewal or extension of any existing subleases described in Paragraph 9 herein, Lessee shall provide Lessor with copies of the sublease agreement for review and approval. The subleases shall confer no rights to the sublessees that extend beyond the terms of this lease, and in no event shall the expiration term of any sublease extend beyond that of this Lease.

b. On September 30th of each year Lessee shall provide Lessor with an annual report showing whether expenses for the operation and maintenance of the Lease Premises exceeded the income generated thereon in the preceding fiscal year. Lessee shall pay rent for any fiscal year in which the amount of income generated exceeds expenses for operation and maintenance of the Lease premises. The monetary rent shall be one half (50%) of the income generated that exceeds the expenses for operation and maintenance within the fiscal year. Lessee shall include the rental payment as prescribed above when submitting an annual report covering a fiscal year in which monetary rent is due.

c. Lessee's "income" for purposes of determining rent under this lease shall not include any income tax. "Expenses" shall include direct costs and indirect costs, including administrative expenses and payment of bond and loan obligations. All such indirect costs shall be attributable to the operation and maintenance of the Lease Premises.

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SECTION 3

GENERAL PROVISIONS

1. **GENERAL**
In the case of any conflict between these General Provisions and Special Provisions found in Section 2, the Special Provisions control.

2. **DEFINITIONS**
For the purposes of this Lease, the following terms shall be defined as stated below:

"Additions" shall be defined as any use or Improvements other than those expressly authorized in this Lease.

"Alterations" shall be defined as any material change in the size, scope, density, type, nature, or intensity of Improvements on the Lease Premises from what is authorized in this Lease. Alterations shall also include any modifications, alterations, or renovations of the land or waterways on the Lease Premises other than those authorized by this Lease.

"Breach" shall be defined as a party's unjustified or unexcused nonperformance of a contractual duty the party is required to immediately perform.

"Damages" shall include all liabilities, demands, claims, actions or causes of action whether regulatory, legislative or judicial in nature; all assessments, levies, losses, fines, penalties, damages, costs and expenses, including, without limitation: (i) reasonable attorneys', accountants', investigators', and experts' fees and expenses sustained or incurred in connection with the defense or investigation of any such liability, and (ii) costs and expenses incurred to bring the Lease Premises into compliance with Environmental Laws, a court order, or applicable provisions of a Regulatory Agency. The term "Damages" also includes, expressly, those Damages that arise as a result of strict liability, whether arising under Environmental Laws or otherwise.

"Default" shall be defined as a material Breach of magnitude sufficient to justify termination of the Lease.

"Environmental Law" shall be defined as and include all federal, state, and local environmental, health, and safety laws, statutes, ordinances, regulations, rules, judgments, orders, and notice requirements, which were in effect as of the date of execution of this Lease or are subsequently enacted and lawfully applied hereto, which regulate or relate to (a) the protection or clean-up of the environment; (b) the use, treatment, storage, transportation, handling or disposal of hazardous, toxic or otherwise dangerous substances, wastes or materials; (c) the quality of the air and the discharge of airborne wastes, gases, particles, or other emissions; (d) the preservation or protection of waterways, groundwater, or drinking water; (e) the health and safety of persons or property; or (f) impose liability with respect to any of the foregoing, including without limitation, the California Environmental Quality Act (CEQA) [PRC §§ 21000 et seq.]; the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) [42 USCS §§ 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 (RCRA) [42 USCS §§ 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution Control Act (FWPCA) [33 USCS §§ 1251 et seq.]; the Toxic Substances Control Act (TSCA) [15 USCS §§ 2601 et seq.]; the Hazardous Materials Transportation Act (HMTA) [49 USCS §§ 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 USCS §§ 136 et seq.]; the Superfund Amendments and Reauthorization Act [42 USCS §§ 6901 et seq.]; the Clean Air Act [42 USCS §§ 7401 et seq.]; the Safe Drinking Water Act [42 USCS §§ 300f et seq.]; the Solid Waste Disposal Act [42 USCS §§ 6901 et seq.]; the Surface Mining Control and Reclamation Act [30 USCS §§ 1201 et seq.]; the Emergency Planning and Community Right to Know Act [42 USCS §§ 11001 et seq.]; the Occupational Safety and Health Act [29 USCS §§ 655 and 657]; the California Underground Storage of Hazardous Substances Act [H & S C §§ 25280 et seq.]; the California Hazardous Substances Account Act [H & S C §§ 25300 et seq.]; the California Hazardous Waste Control Act [H & S C §§ 25100 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [H & S C §§ 24249.5 et seq.]; the Porter-Cologne Water Quality Act [Water C §§ 13000 et seq.] together with any amendments of or regulations promulgated under the statutes cited above.

"Hazardous Material" shall be defined as and include any substance which falls within the definition of hazardous substance, hazardous waste, hazardous material, toxic substance, solid waste, pollutant, or contaminant, under any Environmental Law.

"Improvements" shall be defined as any modification, alteration, addition, or removal of any material, and any other action which serves to change the condition of the Lease Premises from the natural state whether situated above, on, or under the Lease Premises. Improvements include, but are not limited to buildings, structures, facilities, decks, docks, wharves, piers, walks, curbs, bridges, buoys, landscaping, roadways, shoreline protective structures of all types, foundations, pilings or similar support structures whether above or below the water line, fences, utilities, pipelines, and any other construction of any type situated on the Lease Premises.

"Lease" shall be defined as this lease contract together with all amendments and exhibits.

"Lease Premises" shall be defined as the area of land, together with any improvements located thereon, the use and occupancy of which is authorized by this Lease.

"Lessor" shall be defined as the state of California, acting by and through the California State Lands Commission, including the Commissioners, their alternates and designates, the Executive Officer, and the staff of the California State Lands Commission.

"Regulatory Agency" shall include any Federal, State, County, Municipal, or Local agency having jurisdiction over the Lease Premises.

"Repairs" shall be defined as all work of any kind made to maintain, change, restore, strengthen, replace, alter, or otherwise affect any Improvement on the Lease Premises.

"Residence" shall be defined as any Improvement, whether permanent, movable, or temporary, or a portion thereof, which is for the time being a home or place of lodging. A Residence includes any Improvement affixed to the land such as trailers or cabins, built on a raised foundation such as stilts or pilings, and floating residences such as boats, barges, arks, and houseboats, and any combination of such Improvements which provide residential accommodations to the Lessee or others. "Residence" shall not include transitory, intermittent, recreational use of facilities such as campgrounds.

"Residential Use" shall be defined as Improvements such as, but not limited to, sundecks, and sunrooms which are extensions of, or additions to, the upland property and are not water-dependent uses. Although the various uses or Improvements which may fall under this definition may vary by geographic area, lease type, or other factors, it is the intention of the parties to include in this definition all uses and Improvements which are not water-dependent but residential in nature, or those uses and Improvements which are not consistent with common law public trust principles and values.

3. CONSIDERATION

(a) **Absolute Triple Net Lease**

This Lease is an absolute triple net lease, pursuant to which Lessor has no obligation with respect to the payment of taxes, insurance, the cost of maintenance, utilities and repairs or other costs or obligations associated with the Leased Premises, except as expressly stated herein.

(b) **Rent**

Lessee agrees to pay Lessor rent as stated in this Lease, in annual installments, for the use and occupancy of the Lease Premises. The first installment shall be due on or before the beginning date of this Lease and all subsequent installments shall be due on or before each anniversary of its beginning date during each year of the Lease term, or as otherwise provided in this Lease. Said sums shall be paid in lawful money of the United States of America. Lessee shall send said rent to the mailing address of Lessor. Timeliness of receipt of remittances sent by mail shall be governed by the postmark date as stated in Government Code Section 11002. Invoices for rent due may be provided by Lessor as a courtesy. Lessor's failure to, or delinquency in, providing invoices shall neither excuse Lessee from paying rent, nor extend the time for paying rent.

(c) **Modification**

Lessor may modify the method, amount, or rate of consideration effective on each fifth anniversary of the beginning date of this Lease. Should Lessor fail to exercise such right effective on any fifth anniversary it may do so effective on any one (1) of the next four (4) anniversaries following such fifth anniversary, without prejudice to its right to effect such modification on the next or any succeeding fifth anniversary of the

beginning date. No such modification shall become effective unless Lessee is given at least thirty (30) days' notice prior to the date of the Commission meeting wherein the rent modification is considered, or thirty (30) days' notice prior to the effective date of the increase, whichever provides a greater notice period.

If the consideration for this Lease is based on a percentage of income, royalties, profits, or any similar business performance indicators, Lessee shall provide Lessor with financial statements and all other documents necessary to determine the relevant basis for income.

(d) **Penalty and Interest**
Any installments of rent accruing under this Lease not paid when due shall be subject to a delinquency charge equal to five percent (5%) of the principal sum due. Annual payments shall bear interest as specified in Public Resources Code Section 6224 and the Lessor's then existing administrative regulations governing penalty and interest.

(e) **Non-Monetary Consideration**
If the consideration to Lessor for this Lease is the public use, benefit, health, or safety, Lessor shall have the right to review such consideration at any time and set a monetary rental if the Lessor, at its sole discretion, determines that such action is in the best interest of the State. Lessee's assignment or transfer of this Lease pursuant to Section 3 Paragraph 11 below to any third party which results in royalties, profits, or any form of compensation, whether monetary or otherwise, shall give Lessor the right to reevaluate the requirements of this Lease as stated in Section 3 Paragraph 11. Lessee shall be given at least thirty (30) days' notice prior to the date of the Commission meeting wherein the rent modification is considered, or thirty (30) days' notice prior to the effective date that this Lease is converted to a monetary rental, whichever provides more notice.

(f) **Place for Payment of Rent**
All rent that becomes due and payable under this Lease shall be paid to Lessor in person or by United States mail at the Sacramento Offices of the California State Lands Commission, currently at 100 Howe Avenue, Suite 100-South, Sacramento, CA 95825-8202, or at any other place or places that Lessor may designate by written notice to Lessee. Alternately, Lessee may contact Lessor's accounting department for Lessor's current practices for payment by credit card or electronic fund transfer.

4. **BOUNDARIES**
This Lease is not intended to establish the State's boundaries and is made without prejudice to either party regarding any boundary or title claims which may be asserted presently or in the future.

5. **LAND USE**
(a) **General**
(1) Lessee shall use the Lease Premises only for the purpose or purposes stated in this Lease and only for the operation and maintenance of the Improvements expressly authorized in this Lease. Lessee shall commence use of the Lease Premises within ninety (90) days of the beginning date of this Lease or within ninety (90) days of the date set for construction to commence as set forth in this Lease, whichever is later.

(2) All demolition, construction, remodeling, reconstruction, maintenance, repairs, removal, or remediation performed on the Lease Premises at any time by Lessee shall first be authorized by all appropriate Regulatory Agencies. Lessee is solely responsible for determining what approvals, authorizations, or certifications are required, and shall be solely responsible for all costs incurred thereby. In addition, Lessee shall obtain and comply with preventative or remedial measures required by any environmental reports, assessments, or inspections, including, but not limited to those required by the California Environmental Quality Act and/or the National Environmental Policy Act, or as otherwise required by law or reasonably requested by Lessor. Nothing in this Lease shall be interpreted as a pre-approval of any permit, certification, or any other precondition required for the use of the Lease Premises.

(b) **Continuous Use**
Lessee's use of the Lease Premises shall be continuous from commencement of the Lease until its expiration. Lessee's discontinuance of such use for a period of ninety (90) days shall be presumed to be an abandonment unless Lessee demonstrates to Lessor's satisfaction that Lessee's use of the Lease Premises is consistent with similarly situated properties. In the event of an abandonment, Lessor may elect to terminate the Lease as

provided in Paragraph 12(a)(3). Abandonment of the Lease Premises shall not relieve Lessee of any obligations under this Lease.

(c) **Repairs and Maintenance**

(1) Lessor shall not be required to make any Repairs in, on, or about all or part of the Lease Premises. Lessee shall, at all times during the term of this Lease and without any cost or expense to Lessor, keep and maintain the Lease Premises, including all Improvements, in good order and repair and in a clean, safe, sanitary, and orderly condition.

(2) Lessee shall make, or cause to be made, any Repairs which may be required by any Regulatory Agency. Lessee shall observe and comply with, any law, statute, ordinance, plan, regulation, resolution, or policy applicable to the Lease Premises in making such Repairs. All work shall be performed with reasonable diligence, completed within a reasonable time, and performed at the sole cost and expense of Lessee.

(3) Lessee expressly accepts the Lease Premises "as is" and expressly acknowledges that:

(i) Lessor has made no representations or warranties as to the suitability of the Lease Premises for any Improvements. Lessee shall conduct all tests necessary to determine the suitability of the Lease Premises for any proposed use or Improvements authorized; and

(ii) Lessor has made no representations or warranties as to the quality or value of any Improvements found on the Lease Premises, or of their conformity to any applicable building codes, zoning ordinances, or other regulations. Lessee agrees to inspect any preexisting Improvements at its own cost to determine whether such Improvements are safe and suitable for the Lessee's intended use; and

(iii) Lessee shall neither be entitled to any reduction in rent, nor any extension of the terms of this Lease because of damage to or destruction of any Improvements on the Lease Premises.

(iv) Lessee and Lessor agree that any Improvements on the Lease Premises constitute the personal property of Lessee and that fixture law does not apply.

(4) In the event that the Lease Premises is partly, or in whole, comprised of tidal, submerged, or waterfront property, Lessee expressly accepts the hazards involved in using or improving such lands. Lessor is not responsible for, and Lessee shall not be reimbursed for nor receive any offset of rent for, any damages or reduced use of the Lease Premises caused by: local or invasive flora or fauna, flooding, erosion, sea level rise, storms, freezing, inclement weather of any kind, acts of god, maintenance or failure of protective structures, and any other such hazards.

(d) **Additions, Alterations, and Removal**

No Improvements other than those expressly authorized in this Lease shall be constructed by the Lessee on the Lease Premises without the prior written consent of Lessor. Any Additions or Alterations are expressly prohibited. Lessee is also prohibited from any Additions or Alterations which cause a material change to the environmental impact on or around the Lease Premises.

(e) **Enjoyment**

This Lease is non-exclusive, and is subject to the provisions of Section 3, Paragraph 6 below. Lessee shall have the right to exclude persons from the Lease Premises only when their presence or activity constitutes a material interference with Lessee's use and enjoyment of the Lease Premises.

(f) **Discrimination**

Lessee, in its use of the Lease Premises, shall not discriminate against any person or class of persons on any basis protected by federal, state, or local law, including: race, color, creed, religion, national origin, sex, sexual orientation, gender identity, age, marital/parental status, veteran status, or disability.

(g) **Residential Use**

Unless otherwise provided for in this Lease, no portion of the Lease Premises shall be used as a location for a Residence, for the purpose of mooring or maintaining a structure which is used as a Residence, or for Residential Uses.

(h) **Commercial Use**

Unless otherwise provided for in this Lease, the Lease Premises is to be used by Lessee and Lessee's invitees or guests only. Use of the Lease Premises for commercial purposes; conducting a business, whether for profit or otherwise; and any subleasing, rental, or any transaction whereby Lessee directly or indirectly receives compensation from a third party in exchange for use of the Lease Premises shall constitute an immediate Default of this lease with no cure period.

6. RESERVATIONS, ENCUMBRANCES, AND RIGHTS-OF-WAY

(a) **Reservations**

(1) Lessor expressly reserves all natural resources in or on the Lease Premises, including but not limited to timber, minerals, and geothermal resources as defined under Public Resources Code sections 6401, 6407, and 6903, respectively; the right to grant and transfer the same; as well as the right to grant leases in and over the Lease Premises which may be necessary or convenient for the extraction of such natural resources. Such leasing shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.

(2) Lessor expressly reserves a right to go on the Lease Premises and all Improvements for any purposes associated with this Lease or for carrying out any function required by law, or the rules, regulations, or management policies of the State Lands Commission. Lessor shall have a right of reasonable access to the Lease Premises across Lessee owned or occupied lands adjacent to the Lease Premises for any purpose associated with this Lease.

(3) Lessor expressly reserves to the public an easement for convenient access across the Lease Premises to other State-owned lands located near or adjacent to the Lease Premises and a right of reasonable passage across and along any right-of-way granted by this Lease; however, such easement or right-of-way shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.

(4) Lessor expressly reserves the right to lease, convey, or encumber the Lease Premises, in whole or in part, during the Lease term for any purpose not inconsistent or incompatible with the rights or privileges of Lessee under this Lease.

(b) **Encumbrances**

The Lease Premises may be subject to pre-existing contracts, leases, licenses, easements, encumbrances, and claims and is made without warranty by Lessor of title, condition, or fitness of the land for the stated or intended purpose.

7. RULES, REGULATIONS, AND TAXES

(a) Lessee shall comply with and be bound by all presently existing or subsequently enacted rules, regulations, statutes or ordinances of the State Lands Commission or any Regulatory Agency. Occupancy or use of the Lease Premises provides no exemption from applicable regulations including, but not limited to, federal, state, county and local regulations, regulations promoting public health, safety, or welfare, building codes, zoning ordinances, and sanitation regulations. Lessee expressly acknowledges that Regulatory Agencies have jurisdiction over the Lease Premises unless such laws are in direct conflict with state law or public trust principles.

(b) Lessee understands and agrees that a necessary condition for the granting and continued existence of this Lease is that Lessee obtains and maintains all permits or other entitlements. Lessee expressly acknowledges that issuance of this Lease does not substitute for, or provide preference in obtaining authorizations from other Regulatory Agencies.

(c) **Taxes**

(1) In addition to the rent due under this Lease, Lessee accepts responsibility for and shall pay any and all real and personal property taxes, including possessory interest taxes, assessments, special assessments, user fees, service charges, and other charges of any description levied, imposed on, assessed, or associated with the leasehold interest, Improvements on the Lease Premises, any business or activity occurring on the Lease Premises, the Lease Premises itself, or any portion thereof, levied by any governmental agency or entity. Such payment shall not reduce rent due Lessor under this Lease and Lessor shall have no liability for such payment.

(2) In the event that this Lease commences, terminates or expires during a tax year, Lessee shall pay the taxes for the period of such year during which this Lease was in effect.

(3) Any and all taxes and assessments and installments of taxes and assessments required to be paid by Lessee under this Lease shall be paid when due and the official and original receipt for the payment of such tax, assessment, or installment shall be delivered to Lessor upon request.

(4) Lessee shall indemnify and hold Lessor, the Lease Premises, and any Improvements now or hereafter located thereon, free and harmless from any liability, loss, or Damages resulting from any taxes, assessments, or other charges required by this Lease to be paid by Lessee and from all interest, penalties, and other sums imposed thereon and from any sales or other proceedings to enforce collection of any such taxes, assessments, or other charges.

8. **INDEMNITY**

(a) Lessee's use of the Lease Premises and any Improvements thereon is at Lessee's sole and exclusive risk.

(b) In addition to any other obligation to indemnify Lessor as otherwise provided in this Lease, except to the extent caused by the sole negligence and/or willful misconduct of the Lessor, Lessee shall indemnify, hold harmless, and, at the option of Lessor, defend Lessor, its officers, agents, and employees from any and all Damages resulting from Lessee's occupation and use of the Lease Premises. Lessee shall reimburse Lessor in full for all reasonable costs and attorneys' fees, specifically including, without limitation, any Damages arising by reason of: (1) The issuance, enjoyment, interpretation, Breach, or Default of this Lease; (2) The challenge to or defense of any environmental review upon which the issuance of this Lease is based; (3) The death or injury of any person, or damage to or destruction of any property from any cause whatever in any way connected with the Lease Premises, or with any of the Improvements or personal property on the Lease Premises; (4) The condition of the Lease Premises, or Improvements on the Lease Premises; (5) An act or omission on the Lease Premises by Lessee or any person in, on, or about the Lease Premises; (6) Any work performed on the Lease Premises or material furnished to the Lease Premises; (7) Lessee's failure to comply with any material legal or other requirement validly imposed on Lessee or the Lease Premises by a Regulatory Agency.

(c) The reimbursement provisions of this Paragraph 8 shall not apply to any claims, litigation, or other actions which may be brought by either Lessee or Lessor against each other.

(d) Nothing in this paragraph shall be construed as requiring that Lessor defend itself against all or any aspect of any challenge to this Lease or any associated environmental review. However, Lessee may take whatever legal action is available to it to defend this Lease or any associated environmental review against any challenge by a third party, whether or not Lessor chooses to raise a defense against such a challenge.

(e) Lessee shall notify Lessor immediately in case of any accident, injury, or casualty on the Lease Premises.

9. **INSURANCE**

(a) Lessee shall obtain and maintain in full force and effect during the term of this Lease comprehensive general liability insurance and property damage insurance, with such coverage and limits as may be reasonably requested by Lessor from time to time, but in no event for less than the sum(s) specified against any and all claims or liability arising out of the ownership, use, occupancy, condition, or maintenance of the Lease Premises and all Improvements.

(b) The insurance policy shall identify the Lease by its assigned number. The specific Improvements shall also be generally identified, as well as their location on state owned property. The coverage provided shall be primary and non-contributing. Lessee shall keep such policy current. Lessor shall be named as a "certificate holder" and/or an "additional interest" on the policy. Lessee shall provide Lessor with a current certificate of insurance at all times. At Lessor's request, Lessee shall provide a full copy of the current insurance policy, along with any and all endorsements or other such documents affecting the coverage. Lessor will not be responsible for any premiums or other assessments on the policy.

(c) The insurance coverage specified in this Lease shall be in effect at all times during the Lease term and subsequently until Lessor has either accepted all of the Lease Premises as improved or restored by Lessee as provided elsewhere in this Lease. Lessee shall notify Lessor within five (5) business days if the insurance is canceled for any reason.

10. SURETY BOND

(a) When required by Section 1 of this Lease, Lessee shall provide a surety bond or other security device acceptable to Lessor, for the specified amount, and naming the State of California, California State Lands Commission as the assured, to guarantee to Lessor the faithful observance and performance by Lessee of all of the terms, covenants, and conditions of this Lease.

(b) Lessor may require an increase in the amount of the surety bond or other security device to cover any additionally authorized Improvements, any modification of consideration, or to provide for inflation or other increased need for security. The surety bond or other security device may be increased on each fifth anniversary of the beginning date of this Lease. Should Lessor fail to exercise such right effective on any fifth anniversary, it may do so effective on any one (1) of the next four (4) anniversaries following such fifth anniversary without prejudice to its right to effect such modification on the next or any succeeding fifth anniversary. No such modification shall become effective unless Lessee is given at least thirty (30) days' notice prior to the date of the Commission meeting wherein the modification of the bond or security is considered, or thirty (30) days' notice prior to the effective date of the increase, whichever provides more notice.

(c) The surety bond or other security device shall be maintained in full force and effect at all times during the Lease term and subsequently until Lessor has either accepted all of the Lease Premises as improved or restored by Lessee as provided elsewhere in this Lease. Lessee must first seek approval of Lessor before changing the type of security device used, or the bond holder.

11. ASSIGNMENT, ENCUMBRANCING OR SUBLETTING

(a) Lessee shall not either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease and shall not sublet the Lease Premises, in whole or in part, or allow any person other than the Lessee's employees, agents, servants and invitees to occupy or use all or any portion of the Lease Premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld.

(1) Notwithstanding the foregoing prohibition against transfer and assignment, the Lease may be transferred by Lessee if the transfer is caused by the death of a spouse and the full interest of the deceased spouse is transferred to a surviving spouse; or the transfer is caused by the dissolution of the marriage of Lessee and the full interest of one of the spouses is transferred to the other spouse. In the event of such a transfer, Lessor shall be notified in writing within 30 days of the transfer.

(2) Notice to Lessor of Successor Trustee(s): In the event this Lease is held in trust, and the Lessee is a trustee thereof, the substitution or succession of a new trustee shall not be an assignment or transfer for the purposes of this Paragraph. Lessee (and by operation of law, any successor trustee) agrees to provide prompt notice to Lessor of any succession or substitution of trustee in accordance with Paragraph 16(c) of General Provisions, no later than sixty (60) days after the named trustee as appears on the face of this Lease becomes unable or ceases to serve as trustee for any reason.

(b) The following shall be deemed to be an assignment or transfer within the meaning of this Lease:

(1) If Lessee is a business entity, any dissolution, merger, consolidation or other reorganization of Lessee, or the sale or other transfer of substantially all the assets of Lessee. If Lessee is a publicly traded entity,

transfers of interests in Lessee shall not constitute an assignment requiring the consent of Lessor.

(2) If Lessee is a partnership, a transfer of any interest of a general partner, a withdrawal of any general partner from the partnership, or the dissolution of the partnership.

(c) If this Lease is for sovereign lands appurtenant to adjoining littoral or riparian land, Lessee shall not transfer or assign its ownership interest or use rights in such adjoining lands separately from the leasehold rights granted herein without the prior written consent of Lessor.

(d) If Lessee desires to assign, sublet, encumber or otherwise transfer all or any portion of the Lease Premises, Lessee shall do all of the following:

(1) Give not less than 90 days' prior written notice to Lessor;

(2) Provide the name, complete business organization, operational structure, and formation documents of the proposed assignee, sublessee, secured third party, or other transferee; and the nature of the use of and interest in the Lease Premises proposed by the assignee, sublessee, secured third party or other transferee.

(3) Provide the terms and conditions of the proposed assignment, sublease, or encumbrance or other transfer;

(4) Provide audited financial statements for the two most recently completed fiscal years of the proposed assignee, sublessee, secured party or other transferee; and provide pro forma financial statements showing the projected income, expense and financial condition resulting from use of the Lease Premises; and

(5) Provide such additional or supplemental information as Lessor may reasonably request concerning the proposed assignee, sublessee, secured party or other transferee.

(6) Lessor will evaluate proposed assignees, sublessees, secured third parties and other transferees and grant approval or disapproval according to standards of commercial reasonableness considering the following factors within the context of the proposed use: the proposed party's financial strength and reliability, their business experience and expertise, their personal and business reputation, their managerial and operational skills, their proposed use and projected rental, as well as other relevant factors.

(e) Lessor shall have a reasonable period of time from the receipt of all documents and other information required under this provision to grant or deny its approval of the proposed party. Lessor may reevaluate the rent, insurance and/or bond provisions of this Lease, and may condition its approval of the proposed assignment, sublease, hypothecation, mortgage, or other transfer on the party's acceptance of the new terms. Lessee's rights stated in this paragraph shall apply regardless of whether the proposed transfer coincides with a regular rent review period as stated in Section 3 Paragraph 3(c) above.

(f) Lessee's mortgage or hypothecation of this Lease, if approved by Lessor, shall be subject to terms and conditions imposed by a separately negotiated encumbrancing agreement.

(g) Upon the express written assumption of all obligations and duties under this Lease by an assignee approved by Lessor, the Lessee may be released from all liability under this Lease arising after the effective date of assignment and not associated with Lessee's use, possession or occupation of or activities on the Lease Premises; except as to any hazardous wastes, substances or materials as defined under federal, state or local law, regulation, or ordinance manufactured, generated, used, placed, disposed, stored or transported on the Lease Premises during Lessee's tenancy.

(h) If the Lessee files a petition or an order for relief is entered against Lessee, under Chapters 7, 9, 11 or 13 of the Bankruptcy Code (11 USC Sect. 101, et seq.) then the trustee or debtor-in-possession must elect to assume or reject this Lease within sixty (60) days after filing of the petition or appointment of the trustee, or the Lease shall be deemed to have been rejected, and Lessor shall be entitled to immediate possession of the Lease Premises. No assumption or assignment of this Lease shall be effective unless it is in writing and

unless the trustee or debtor-in-possession has cured all Defaults under this Lease (monetary and non-monetary) or has provided Lessor with adequate assurances (1) that within ten (10) days from the date of such assumption or assignment, all monetary Defaults under this Lease will be cured; and (2) that within thirty (30) days from the date of such assumption, all non-monetary Defaults under this Lease will be cured; and (3) that all provisions of this Lease will be satisfactorily performed in the future.

(i) In the event of any transfer or assignment, under this Paragraph 11 or by any other means authorized by this Lease, the Lease terms shall be for the remaining years existing on the Lease prior to the transfer or assignment. A transfer or assignment shall not extend the term of this Lease.

12. DEFAULT AND REMEDIES

(a) **Default**

The occurrence of any one or more of the following events shall immediately and without further notice constitute a Default of this Lease:

(1) Lessee's failure to make any payment of rent, royalty, or other consideration as required under this Lease; or

(2) Lessee's failure to obtain or maintain liability insurance or a surety bond or other security device as required under this Lease; or

(3) Lessee's abandonment of the Lease Premises (including the covenant for continuous use as provided for in Paragraph 5(b)) during the Lease term; or

(4) Lessee's failure to obtain and maintain all necessary governmental permits or other entitlements; or

(5) The maintenance of the Lease Premises in violation of, or failure to comply with, any applicable provisions of any Regulatory Agency, Environmental Law, or maintenance of the Lease Premises in a condition constituting nuisance; or

(6) Lessee's Failure to commence to construct and to complete construction of the Improvements authorized by this Lease within the time limits specified in this Lease.

(7) Lessee is found to sublet or otherwise surrender daily management and control of the Lease Premises to a third party without the knowledge, expressed written consent or authorization of the Lessor.

(b) Lessee's failure to observe or perform any other term, covenant, or condition of this Lease when such failure shall continue for a period of thirty (30) days after Lessor's giving written notice shall constitute a Default of this lease. However, if the nature of Lessee's Default under this paragraph is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in Default if Lessee commences such cure within such thirty (30) day period and diligently proceeds with such cure to completion.

(c) Should Lessee Breach any term, covenant, or condition of this Lease under Paragraph 12(b) above three (3) times in any three hundred and sixty-five (365) day period, the third Breach will be a Default under this Lease and Lessor will be entitled to immediately terminate this Lease, and take other appropriate action. Lessor will provide written notice of each Breach as provided above, and provide written notice that future Breaches will constitute immediate Default with no cure period.

(d) **Remedies**

In the event of a Default by Lessee and Lessee's failure to cure such Default if such a cure period is applicable, Lessor may at any time and with or without notice do any one or more of the following in addition to any rights or remedies permitted by law:

(1) Re-enter the Lease Premises, remove all persons and property, and repossess and enjoy such premises; or

(2) Terminate this Lease and Lessee's right of possession of the Lease Premises by any lawful means. The termination shall not relieve Lessee of any obligation, monetary or otherwise, which has accrued prior to the date of termination. Such termination shall be effective upon Lessor's giving written notice and upon Lessee's receipt of such notice. Lessee shall immediately surrender possession of the Lease Premises to Lessor. Lessor shall be entitled to recover from Lessee all amounts to which Lessor is entitled pursuant to Section 1951.2 of the California Civil Code, or any other provision of law, including any necessary Repair, renovation, alteration, remediation, or removal of Improvements; or

(3) Maintain this Lease in full force and effect and recover any rent, royalty, or other consideration as it becomes due without terminating Lessee's right of possession regardless of whether Lessee shall have abandoned the Lease Premises, subject to the conditions imposed by Cal. Civil Code § 1951.2; or

(4) Exercise any other right or remedy which Lessor may have at law or equity.

(e) **Determination of Rental Value**

If rent under this Lease is calculated as a percentage of Lessee's income attributable to the Lease Premises and Lessee abandons the Lease Premises during some or all of the applicable period, then the reasonable rental value shall be the percentage of proceeds Lessor would have received had Lessee operated the Lease Premises in the usual and customary manner.

(f) **Waiver of Rights**

The failure or delay of either party to exercise any right or remedy shall not be construed as a waiver of such right or remedy or any Breach by the other party. Lessor's acceptance of any rent shall not be considered a waiver of any preexisting Breach by Lessee other than the failure to pay the particular rent accepted regardless of Lessor's knowledge of the preexisting Breach at the time rent is accepted.

13. RESTORATION OF LEASE PREMISES AND ENVIRONMENTAL MATTERS

(a) **Restoration of Lease Premises**

(1) Upon expiration or sooner termination of this Lease, Lessee must immediately surrender possession of the Lease Premises to Lessor. Prior to the time of surrender, Lessee must remove all or any Improvements together with the debris and all parts of any such Improvements at its sole expense and risk, regardless of whether Lessee actually constructed or placed the Improvements on the Lease Premises; or Lessor, at its sole and absolute discretion, may itself remove or have removed all or any portion of such Improvements at Lessee's sole expense. Lessor may waive all or any part of this obligation in its sole discretion if doing so is in the best interests of the State.

(2) As a separate and related obligation, Lessee shall restore the Lease Premises as nearly as possible to the conditions existing prior to the installation or construction of any Improvements. For purposes of this Lease, restoration includes removal of any landscaping; removal of any Hazardous Materials; and to the extent possible, undoing any grading, fill, excavation, or similar alterations of the natural features of the Lease Premises. Lessor may waive all or any part of this obligation in its sole and absolute discretion.

(3) Unless otherwise provided for in this Lease, Lessee shall submit to Lessor no later than one (1) year prior to the expiration of this Lease either: (a) an application and minimum expense deposit for a new lease for the continued use of the Lease Premises, or (b) a plan for the restoration of the Lease Premises to be completed prior to the expiration of the lease term together with a timeline for obtaining all necessary permits and conducting the work prior to the expiration of this Lease.

(4) In removing any or all Improvements, or conducting any restoration work, Lessee shall be required to obtain any permits or other governmental approvals as may then be required by any Regulatory Agency, including, without limitation, any Environmental Law.

(5) Lessor may, upon written notice, in its sole and absolute discretion, accept title to any or all Improvements at the termination of this Lease. Lessor shall notify Lessee that Lessor intends to take title to any or all Improvements within six (6) months of Lessee submitting a plan for restoration under

Paragraph 13(a)(3)(b) above. If Lessor elects to take title to any such Improvements, Lessee shall deliver to Lessor such documentation as may be necessary to convey title to such Improvements to Lessor free and clear of any liens, mortgages, loans, or any other encumbrances. Lessor shall not pay, and Lessee shall not be entitled to compensation for Lessor's taking title to such property.

(b) **Environmental Matters**

(1) Lessee's Obligations:

(i) Lessee will not use, occupy, or permit any portion of the Lease Premises to be used or occupied in violation of any Environmental Law. Lessee shall not manufacture or generate or store Hazardous Material on the Lease Premises unless specifically authorized under other terms of this Lease.

(ii) Lessee shall practice conservation of water, energy, and other natural resources.

(iii) Lessee shall notify Lessor and the appropriate governmental emergency response agency, or agencies immediately in the event of any release or threatened release of any Hazardous Material.

(2) Lessor may at any time during the Lease term require Lessee to conduct at its own expense and by a contractor approved by Lessor an independent environmental site assessment or inspection for the presence or suspected presence of Hazardous Material generated, used, placed, disposed, stored, or transported on the Lease Premises during the term of the Lease. Lessee shall provide the results of the assessment or inspection to Lessor and the appropriate governmental response agency or agencies and shall further be responsible for removing or taking other appropriate remedial action regarding such Hazardous Material in accordance with applicable Environmental Law.

(3) Environmental Indemnity

Lessee shall indemnify, defend, and hold Lessor and Lessor's, officer, appointees, volunteers, employees, agents, successors and assigns free and harmless from and against all Damages that may at any time be imposed upon, incurred by, or asserted or awarded against Lessor in connection with or arising from any Breach of Lessee's obligations hereunder; or out of any violation by Lessee of any Environmental Law; or resulting in the imposition of any lien or claim for the recovery of any costs for environmental cleanup or other response costs relating to the release or threatened release of Hazardous Materials on the Lease Premises during the Lessee's tenancy. This obligation shall include any prior leases between Lessor and Lessee and will continue through any periods Lessee is in holdover, unlawful detainer, or any subsequent month-to-month tenancies created by operation of law. Lessee's obligations hereunder will survive the expiration or sooner termination of this Lease.

(4) Violation of this section shall constitute grounds for termination of the Lease. Lessor, shall notify Lessee when, in Lessor's opinion, Lessee has violated the provisions of this section. Lessee shall immediately discontinue the conduct and respond within five (5) business days. Lessee shall take all measures necessary to remedy the condition.

14. QUITCLAIM

Lessee shall, upon the early termination of this Lease and at Lessor's request, execute and deliver to Lessor in a form provided by Lessor a good and sufficient release of all rights under this Lease. Should Lessee fail or refuse to deliver such a release, Lessor may record a written notice reciting such failure or refusal. This written notice shall, from the date of its recordation, be conclusive evidence against Lessee of the termination of this Lease and all other claimants.

15. HOLDING-OVER

(a) This Lease shall terminate without further notice upon the expiration of the term of this Lease. Lessee shall have removed any Improvements and completed any restoration as required by Lessor prior to the expiration of this Lease, and shall surrender possession of the Lease Premises. Any failure by the Lessee to remove Improvements, restore the Lease Premises, and/or surrender possession of the Lease Premises at the expiration or sooner termination of this Lease shall not constitute a renewal or extension and shall not give Lessee any rights in or to the Lease Premises or any part thereof except as expressly provided in this Lease. Lessee shall be deemed in unlawful detainer of the Lease Premises and Lessor shall be entitled to all resulting legal remedies.

(b) Lessor may, in its sole discretion, choose to accept Rent for the Lease Premises instead of immediately taking legal action to recover possession of the Lease Premises. Any tenancy created by operation of law on Lessor's acceptance of rent shall be deemed a month-to-month tenancy regardless of what sum or sums Lessee delivers to Lessor. Except as set forth below, any subsequent tenancy created in this manner shall be on the same terms, covenants, and conditions set forth in this Lease insofar as such terms, covenants, and conditions can be applicable to a month-to-month tenancy

(c) In recognition of the increased accounting, land management, and supervisory staff time required for month-to-month tenancies, the rent for each month or any portion thereof during such holdover period may be an amount equal to one hundred fifty percent (150%) of one-twelfth (1/12) of the total compensation for the most recent year paid. In the event this Lease does not require monetary compensation, Lessor shall have the right to establish rent based on the fair market value of the Lease Premises. The month-to-month tenancy may be terminated by Lessee or Lessor upon thirty (30) calendar days' prior written notice to the other.

16. ADDITIONAL PROVISIONS

(a) **Waiver**

(1) No term, covenant, or condition of this Lease and no omission, neglect, Default or Breach of any such term, covenant or condition shall be deemed to have been waived by Lessor's acceptance of a late or nonconforming performance or otherwise, unless such a waiver is expressly acknowledged by Lessor in writing. No delay or omission of Lessor to exercise any right or power arising from any omission, neglect, Default or Breach of term, covenant, or condition of this Lease shall be construed as a waiver or any acquiescence therein.

(2) Any such waiver shall not be deemed to be a waiver of any other term, covenant or condition; of any successive Breaches of the same term, covenant, or condition; or of any other Default or Breach of any term, covenant or condition of this Lease.

(b) **Time**

Time is of the essence for this Lease and each and all of its terms, covenants or conditions in which performance is a factor.

(c) **Notice**

All notices required to be given under this Lease shall be given in writing, sent by U.S. Mail with postage prepaid, to Lessor at the offices of the State Lands Commission and the Lessee at the address specified in this Lease. Lessee shall give Lessor notice of any change in its name or address.

(d) **Consent**

Where Lessor's consent is required under this Lease its consent for one transaction or event shall not be deemed to be a consent to any subsequent occurrence of the same or any other transaction or event.

(e) **Changes**

This Lease may be terminated and its term, covenants, and conditions amended, revised, or supplemented only by mutual written agreement of the parties.

(f) **Successors**

The terms, covenants, and conditions of this Lease shall extend to and be binding upon and inure to the benefit of the heirs, successors, and assigns of the respective parties.

(g) **Joint and Several Obligation**

If more than one Lessee is a party to this Lease, the obligations of the Lessees shall be joint and several.

(h) **Captions**

The section and paragraph captions used in this Lease are for the convenience of the parties. The captions are not controlling and shall have no effect upon the construction or interpretation of this Lease.

(i) **Severability**

If any term, covenant or condition of this Lease is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall remain valid and enforceable to the fullest extent permitted by law.

(j) **Representations**

Lessee agrees that no representations have been made by Lessor or by any person or agent acting for Lessor. Lessor and Lessee agree and acknowledge that this document contains the entire agreement of the parties, that there are no verbal agreements, representations, warranties or other understandings affecting this Lease, and Lessor and Lessee, as a material part of the consideration of this Lease, waive all claims against the other for rescission, damages, or otherwise by reason of any alleged covenant, agreement or understanding not contained in this Lease.

(k) **Gender and Plurality**

In this Lease, the masculine gender includes both the feminine and neuter, and the singular number includes the plural whenever the context so requires.

(l) **Survival of Certain Covenants**

All covenants pertaining to bond, insurance, indemnification, restoration obligations, Breach, Default, and remedies shall survive the expiration or earlier termination of this Lease until Lessee has fulfilled all obligations to restore the Lease Premises as required by this Lease.

(m) **Counterparts**

This agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

(n) **Delegation of Authority**

Lessor and Lessee acknowledge Lessor as defined herein includes the Commission Members, their alternates or designees, and the staff of the Commission. The ability of staff of the Commission to give consent, or take other discretionary actions described herein will be as described in the then-current delegation of authority to Commission staff. All other powers are reserved to the Commission.

[*Remainder of Page Intentionally Left Blank*]

STATE OF CALIFORNIA - STATE LANDS COMMISSION

LEASE NO. PRC 6616.1

This Lease shall become effective only when approved by and executed on behalf of the State Lands Commission of the State of California and a duly executed copy has been delivered to Lessee. The submission of this Lease by Lessor, its agent, or representative for examination by Lessee does not constitute an option or offer to lease the Lease Premises upon the terms and conditions contained herein, or a reservation of the Lease Premises in favor of Lessee. Lessee's submission of an executed copy of this Lease to Lessor shall constitute an offer to Lessor to lease the Lease Premises on the terms and conditions set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date hereafter affixed.

LESSEE:

CITY OF HUNTINGTON BEACH

By: _____
Michael Posey

Title: Mayor

Date: July 17, 2018

LESSOR:

STATE OF CALIFORNIA
STATE LANDS COMMISSION

By: _____
Robert Brian Bugsch

Title: Chief, Land Management Division

Date: AUG 30 2018

ATTACH ACKNOWLEDGMENT

Execution of this document was authorized by the California State Lands Commission on

June 21, 2018
(Month Day Year)

APPROVED AS TO FORM
By: _____
for MICHAEL E. GATES
CITY ATTORNEY
CITY OF HUNTINGTON BEACH

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

On 7/17/2018 before me, ***P. L. Esparza***, *Notary Public*, personally appeared **Mike Posey** who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

P. L. ESPARZA
Notary Public - California
Orange County
Commission # 2204197
My Comm. Expires Aug 4, 2021

(Seal)

(Notary Signature)

EXHIBIT A
Land Description

EXHIBIT A

PRC 6616.1

LAND DESCRIPTION

A strip of tide and submerged land 160 feet wide being 80 feet on each side of the following described centerline situate within the City of Huntington Beach, Orange County, State of California, the centerline of said strip being described as follows:

BEGINNING at the intersection of northeasterly line of Ocean Avenue with the centerline of Main Street, thence S 41° 41' 37" W 2065.92 feet to the end of said centerline of said strip of tide and submerged land.

EXCEPTING THEREFROM all that portion lying landward of the ordinary high water mark of the Pacific Ocean.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 06/14/2018 by the California State Lands Commission Boundary Unit.

NO SCALE

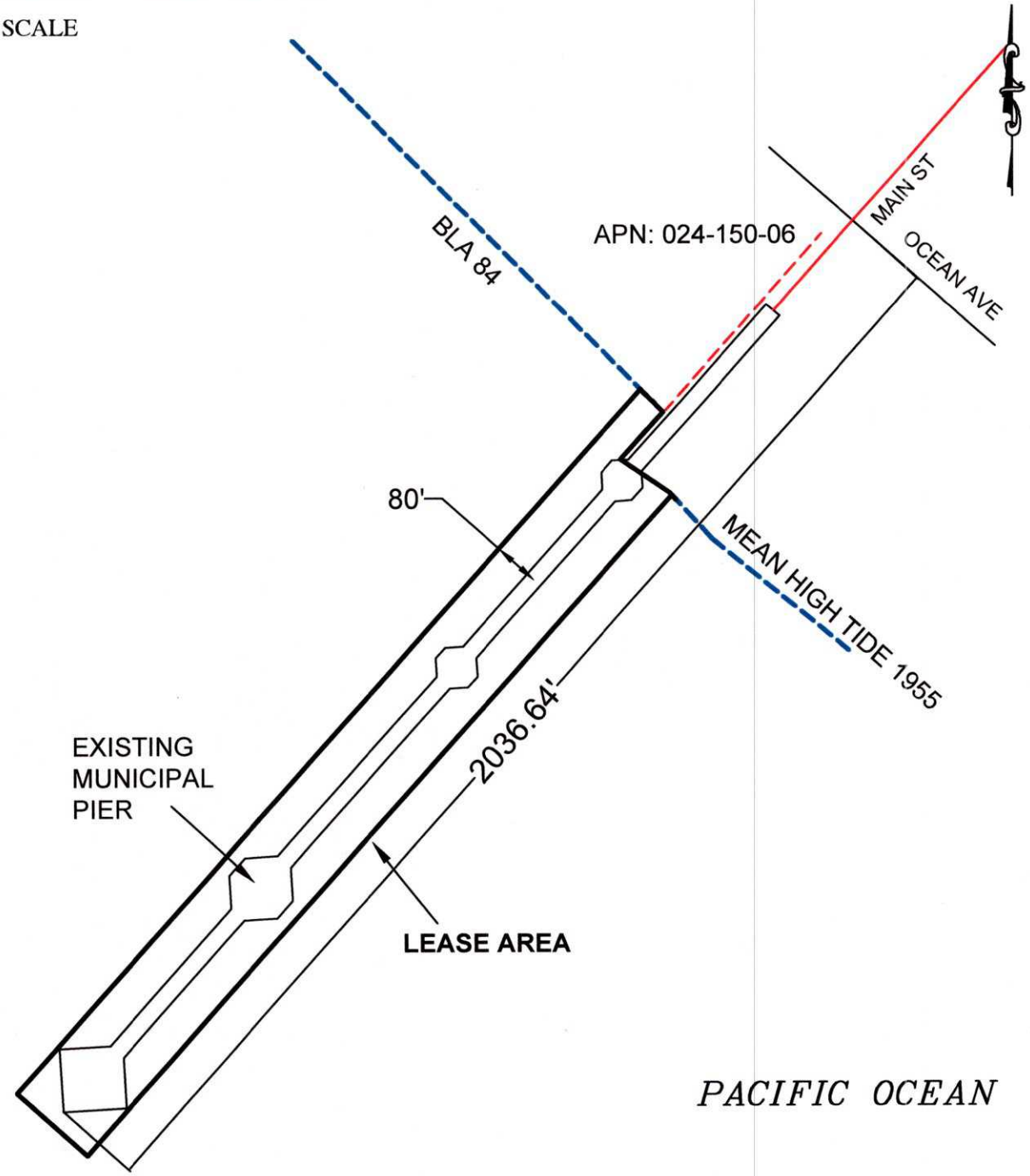


EXHIBIT A

Page 2 of 2

RPF 06/14/2018

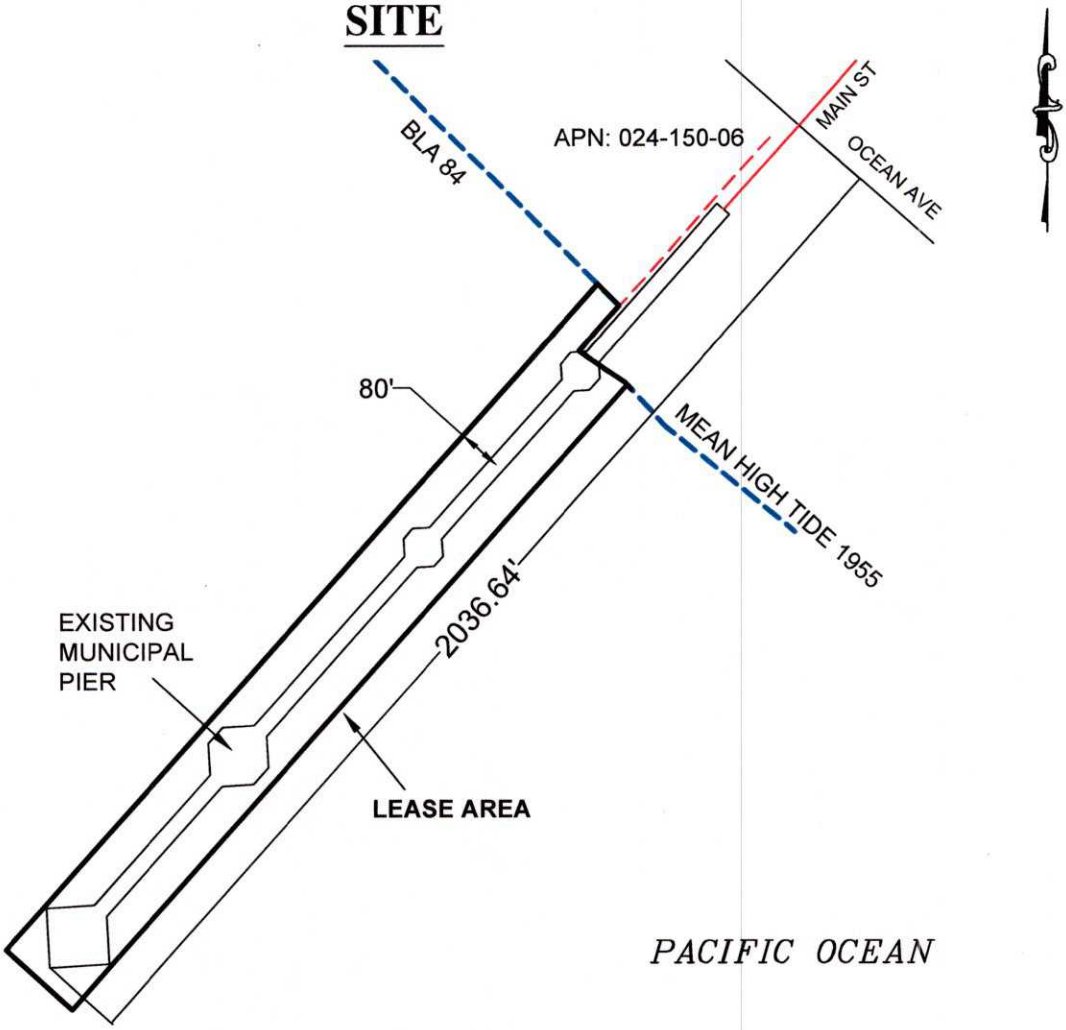
LAND DESCRIPTION PLAT PRC 6616.1, CITY OF HUNTINGTON BEACH ORANGE COUNTY	CALIFORNIA STATE LANDS COMMISSION

EXHIBIT B

Site and Location Map

NO SCALE

SITE



MUNICIPAL PIER, HUNTINGTON BEACH

NO SCALE

LOCATION

MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

Exhibit B

PRC 6616.1
CITY OF HUNTINTON BEACH
APN 024-150-06
GENERAL LEASE -
PUBLIC AGENCY USE
ORANGE COUNTY

RPF 06/14/2018

EXHIBITS C1 through C6
Endorsement of Subleases

EXHIBIT C-1

PRC 6616.1

SUBLEASE

ENDORSEMENT

STATE OF CALIFORNIA
STATE LANDS COMMISSION

Pursuant to Commission Minute Item No.C57 dated, June 21, 2018, the herein sublease between, City of Huntington Beach and Abercrombie & Fitch Company, under a portion of State Lease PRC No. 6616.1, is hereby approved.

BY: _____
BRIAN BUGSCH, Chief
Land Management Division

EXHIBIT C-2

PRC 6616.1

SUBLEASE

ENDORSEMENT

STATE OF CALIFORNIA
STATE LANDS COMMISSION

Pursuant to Commission Minute Item No. C57 dated, June 21, 2018, the herein sublease between, City of Huntington Beach and Ruby's Diner Inc., under a portion of State Lease PRC No. 6616.1, is hereby approved.

BY: _____
BRIAN BUGSCH, Chief
Land Management Division

EXHIBIT C-3

PRC 6616.1

SUBLEASE

ENDORSEMENT

STATE OF CALIFORNIA
STATE LANDS COMMISSION

Pursuant to Commission Minute Item No. C57 dated, June 21, 2018, the herein sublease between, City of Huntington Beach and Let's Go Fishing, under a portion of State Lease PRC No. 6616.1, is hereby approved.

BY: _____
BRIAN BUGSCH, Chief
Land Management Division

EXHIBIT C-4

PRC 6616.1

SUBLEASE

ENDORSEMENT

STATE OF CALIFORNIA
STATE LANDS COMMISSION

Pursuant to Commission Minute Item No.C57 dated, June 21, 2018, the herein sublease between, City of Huntington Beach and Fair Share Enterprises, under a portion of State Lease PRC No. 6616.1, is hereby approved.

BY: _____
BRIAN BUGSCH, Chief
Land Management Division

EXHIBIT C-5

PRC 6616.1

SUBLEASE

ENDORSEMENT

STATE OF CALIFORNIA
STATE LANDS COMMISSION

Pursuant to Commission Minute Item No. C57 dated, June 21, 2018, the herein sublease between, City of Huntington Beach and Surf City Store, under a portion of State Lease PRC No. 6616.1, is hereby approved.

BY: _____
BRIAN BUGSCH, Chief
Land Management Division

EXHIBIT C-6

PRC 6616.1

SUBLEASE

ENDORSEMENT

STATE OF CALIFORNIA
STATE LANDS COMMISSION

Pursuant to Commission Minute Item No. C57 dated, June 21, 2018, the herein sublease between, City of Huntington Beach and Kite Connection, under a portion of State Lease PRC No. 6616.1, is hereby approved.

BY: _____
BRIAN BUGSCH, Chief
Land Management Division

EXHIBIT D

Lease Maintenance Reimbursement Agreement

STATE OF CALIFORNIA
STANDARD AGREEMENT
STD.213 (new 06/03)

AGREEMENT NUMBER
R02718
REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:
   STATE AGENCY'S NAME
   California State Lands Commission (State)
   CONTRACTOR'S NAME
   City of Huntington Beach
2. The term of this Agreement is: June 21, 2018 thru June 20, 2043
3. The maximum amount of this Agreement is: $ 22,500
4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement:

Exhibit A – Scope of Work	2 Page(s)
Exhibit B – Budget Detail and Payment Provision/Definitions and Terms	2 Page(s)
Exhibit C* – General Terms and Conditions	GTC 4/2017
Check mark one item below as Exhibit D:	2 Page(s)

☒ Exhibit D – Special Terms and Conditions (attached hereto as part of this Agreement)
☐ Exhibit D* – Special Terms and Conditions

Items shown with an Asterisk (*) are hereby incorporated by reference and made part of this Agreement as if attached hereto. These documents can be viewed at http://www.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx.

IN WITNESS WHEREOF, this Agreement has been executed by parties hereto.

CONTRACTOR		CALIFORNIA **Department of General Services** Use only
CONTRACTOR'S NAME *(if other than individual, state whether a corporation, partnership, etc.)* City of Huntington Beach		
BY *(Authorized Signature)*	DATE SIGNED July 17, 2018	
PRINTED NAME AND TITLE OF PERSON SIGNING Michael Posey, Mayor		
ADDRESS 2000 Main Street, Huntington Heach, CA 92648		
STATE OF CALIFORNIA		
AGENCY NAME California State Lands Commission		
BY *(Authorized Signature)* Denise Cook	DATE SIGNED 8/10/18	
PRINTED NAME AND TITLE OF PERSON SIGNING Denise Cook, Fiscal Officer		
ADDRESS 100 Howe Avenue, Suite 100-South, Sacramento, California 95825		☒ Exempt per GC 14616

EXHIBIT A

SCOPE OF WORK

1. Work to be Performed – The City of Huntington Beach, the "Lessee", enters into this Agreement with the California State Lands Commission, the "Commission" or "State" (hereafter the Lessee and the Commission/State are referred to collectively as the "Parties") for staff costs associated with the processing and review of periodic reports of the facilities associated with Lessee's General Lease – Public Agency Use, Lease No. PRC 6616.1 (Lease). The State hereby agrees to perform the following services:

   A. Lease Management: The State shall review the Lessee's annual summary reports. Reviewing costs shall include, but not be limited to, actual costs for staff time for review of sea-level rise and flooding vulnerability and risk assessments, updates or amendments to the Local Coastal Program, annual flooding frequency and extent, annual site photographs, schedule and nature of repair and maintenance operations, and coastal hazard remediation and removal. In addition to Lessee's annual report submissions, Lessee shall conduct a structural assessment on or before December 31, 2020 and then every five years following the initial inspection, with a report to be provided within 30 days of inspection for Commission engineering staff review. Staff costs shall include but not be limited to, actual costs of staff time for review of submitted annual summary reports and engineering review of structural inspection reports for the term of the lease pursuant to Section 2, Special Provisions, Paragraph 6, of Lease No. PRC 6616.1.

   B. Mutual Understanding: This Agreement is entered into by the parties hereto with the express understanding that the State cannot assure: 1) final approval of the permit or lease; 2) that permits from other State or local permitting agencies are obtainable; and 3) that either the State or the Lessee by entering into this Agreement is representing that the lease will go forward as proposed. Lessee understands and expressly acknowledges that the State's review of annual summary and inspection reports is for the sole purpose of evaluating Lessee's compliance with a lease from the Commission, if any, and not for any other purpose.

2. Parties' Agents

   A. For Engineering Review the State's Project Officer shall be:
   Chandrashekar Basavalinganadoddi, Supervising Mineral Resource Engineer
   California State Lands Commission
   Mineral Resource Management
   200 Oceangate, 12th floor
   Long Beach, CA 90802
   Tel. (562) 590-5209
   Email: Chandrashekar.Basavalinganadoddi@slc.ca.gov

B. For Lease Management the State's Project Officer shall be:
Lucien Pino, Public Land Management Specialist
California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825
Tel. (916) 574- 1858
E-mail: lucien.pino@slc.ca.gov

C. The Applicant's Project Manager shall be:
Travis K. Hopkins, Director of Public Works
City of Huntington Beach Public Works Department
2000 Main Street
Huntington Beach, CA 92648
Tel. (714) 374-5348
E-mail: thopkins@surfcity-hb.org

D. The Applicant's Agent is:
Travis K. Hopkins, Director of Public Works
City of Huntington Beach Public Works Department
2000 Main Street
Huntington Beach, CA 92648
Tel. (714) 374-5348
E-mail: thopkins@surfcity-hb.org

3. Notices and Authorities

A. Any notice or other written communications required or permitted under this Agreement may be personally delivered in writing to the State's Project Officer or Applicant's Project Manager, or may be sent by certified mail, return receipt requested, to the address stated above and shall, based on such delivery or sending, be deemed to have been effectively communicated. Either party may change such address by written notice to the other party.

Any notice given other than as provided above, shall not be deemed to be effectively communicated until received in writing.

B. The Project Manager shall have full authority to act on behalf of the Lessee for administration of the Project. All communications given to the Project Manager shall be as binding, as if given to the Lessee.

C. The State may change its Project Officer, at any time, by written notice to the Lessee. The Lessee may change its Project Manager, at any time, by written notice to the State's Project Officer.

EXHIBIT B

BUDGET AND PAYMENT PROVISIONS

1. Invoicing and Payment – Lessee agrees to reimburse the State for all reasonable costs associated with the review and processing of annual summary report and quinquennial inspection report submissions according to this Standard Agreement whether prior or subsequent to the execution of this Agreement. Processing costs shall include, but not be limited to, staff time associated with those tasks outlined in Exhibit A, Scope of Work. Staff costs shall be computed in accordance with Section 8752 of the State Administrative Manual and shall include salaries and wages, related staff benefits and administrative overhead.

   The invoice shall be mailed to the Lessee's Project Manager. Payments shall reference the Agreement number assigned to this Agreement and must be mailed to the following address:

   California State Lands Commission
   100 Howe Avenue, Suite 100 South
   Sacramento, CA 95825-8202
   Attention Accounting

2. Estimated Reimbursable Costs – The initial estimated costs are based on the information and contracts existent as of the date of this Agreement. The itemized reimbursable costs estimate, to include recurring annual costs, for Work to be Performed is:

   A. **Lease Management Estimate:**
   To include the following:

      1. Processing and Review of Annual Summary Report: *$500*

      2. Processing and Engineering Review of Periodic Structural Inspection Reports (once every five years): $2,000[1] ($400 per year)

   Approximate Recurring Annual Cost Estimate for Lease Management Review: **$900**[2]

3. Expense Deposits and Billings:

   A. **Lease Management:** Staff costs incurred by the State for Lease Management pursuant to this Agreement, as specified in Exhibit B, paragraph 2(c), shall be billed in arrears on a monthly basis. All payments are due 30 days from the date of the invoice. The State reserves the right to demand an expense deposit equal to the remainder of the Agreement should the Lessee fail to pay invoices within the time specified. Total costs invoiced, including expense deposits, shall not exceed the dollar amount specified in this Agreement unless amended.

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[1] Estimate is based on usual and customary review; should extraordinary circumstances or major repair work occur, staff time needed for engineering review may exceed this estimate. In such an event, Lessee will compensate the State for staff time that exceeds the estimated amount, in accordance with the terms of this agreement.

[2] The $900 Recurring Annual Cost Estimate includes the $500 annual amount, and the recurring periodic amount divided equally at $400 per year over each five-year period.

4. Additional Costs or Services – Lessee will be advised of any estimated cost increase in writing in accordance with this Agreement should the need for additional services become known or as costs previously estimated exceed the above estimate.

   Upon notification of the need for additional funds, the Lessee shall have the option to dispute or accept the increase with all the terms and conditions of this Agreement being unchanged and in effect. The Lessee shall notify the State within five (5) days of notice of any intent to dispute the change. Non-response shall be acknowledged as acceptance of the additional charges and Lessee will be billed for the balance in accordance with the terms above.

5. Definitions and Terms - Wherever the following abbreviations and terms (or pronouns in place of them) are used, the intent and meaning shall be interpreted as provided in this section. Working titles having a masculine gender, and pronouns referring to such said titles, are utilized in this Agreement for the sake of brevity and are not intended to refer to either sex or the neuter. All references to the singular shall refer also to the plural. All references to the plural shall refer also to the singular.

   A. As used within this Agreement, the terms "Lessee" and "Contractor" are used interchangeably and are to be considered the same entity.

   B. As used within this Agreement, the terms "State" and "Commission" are used interchangeably and are to be considered the same entity.

   C. The term "Agreement" refers to this document as executed by the Lessee and the State. This document includes Standard Form and any attached Exhibits.

   D. The term "Project Manager" refers to that person appointed or designated by the Applicant to administer the lease for the Applicant.

   E. The term "Project Officer" refers to that person appointed by the State to manage the lease file associated with this agreement.

   F. The term "Lessee's Agent" refers to that person designated by the Lessee to provide technical assistance and support to the State in coordinating transmittal of reports and other technical information and shall have no authority to act for the Lessee unless otherwise stated in writing by Lessee to the State's Project Officer.

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EXHIBIT C

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required.

2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.

4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).

5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.

6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.

7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or

duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require in ascertaining compliance with this clause. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.)

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 04/2017 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.
a. The Government Code Chapter on Antitrust claims contains the following definitions:
1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tender's final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of $100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of $200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

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EXHIBIT D

SPECIAL TERMS AND CONDITIONS

1. Type of Agreement – This Agreement between the State and the Lessee is for the reimbursement of costs, from the Lessee to the State, for lease maintenance related activities, detailed in Exhibits A and B of this Agreement, performed by staff of the California State Lands Commission. This Agreement does not involve the procurement of goods or services from the Lessee.

2. Effective Reimbursement Period – Notwithstanding the date of Agreement approval in paragraph 1 of GTC 4/2017, the Lessee agrees to reimburse the State for lease maintenance-related review costs detailed in Exhibits A and B of this Agreement, that accrue beginning on the date listed in form STD.213, paragraph 2 of this Agreement until the termination of this Agreement. The term of this agreement shall extend to include any holdover period of Lease No. PRC 6616.1.

3. This paragraph supersedes paragraph 5 of, Exhibit C, "Indemnification":

   Indemnification – To the fullest extent permitted by law, Lessee shall defend, indemnify, and hold harmless the State of California and any and all agencies or departments thereof, including but not limited to, any and all boards, commissions, officers, agents, employees, and representatives (Indemnitees), against any and all claims, liabilities, charges, losses, expenses, and costs, including the State's attorneys' fees (Liabilities), that may arise from or by reason of any action or inaction by the Indemnitees in connection with the work described in Exhibit A. This obligation of the Lessee to indemnify, defend, and hold harmless the Indemnitees shall not apply to any Liabilities caused solely by the gross negligence or intentional acts of the State or its officers, agents, and employees; or to any claims, litigation, or to other actions brought by the Lessee against the Indemnitees in relation to the Lessee's application or this Agreement. This provision shall survive termination of this Agreement.

4. This paragraph supersedes paragraph 6 of GTC 610, Exhibit C, "Disputes":

   Disputes – Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under or relating to the performance of this Agreement which is not disposed of by Agreement shall be decided by the Project Officer, who shall reduce his decision to writing in regard to the dispute and shall transmit a copy thereof to the Lessee within thirty (30) days. The decision of the Project Officer shall be final and conclusive, unless within thirty (30) days from the date of receipt of such copy, the Lessee transmits to the State a written appeal. Said appeal shall be supported with specificity.

   a. In connection with any appeal proceeding under this clause, the Lessee shall be afforded an opportunity to be heard before the State Lands Commission within sixty (90) days of the receipt by the State of the Lessee's written appeal and to offer evidence in support of its appeal. Pending the final decision of any such dispute, the Lessee shall proceed diligently with the performance of the Agreement and in accordance with the written decision of the Project Officer which is the subject of the Lessee's appeal including the payment of invoices to the State.

   b. The procedure described herein shall not prejudice or deny the Lessee's remedies at law. However, the Lessee agrees to exhaust the procedure described herein before pursuing remedies at law. All amounts paid to the State under protest shall be held by the State in trust until the dispute is resolved.

5. Modification – This paragraph supersedes paragraph 7 of GTC 610, Exhibit C, "Termination for Cause":

   Either party may elect to modify the scope of work or costs associated with the lease maintenance described in Exhibit A, Paragraph 1(A) and Exhibit B, Paragraphs 2(A) of this Agreement by written notice at any time prior to or during the lease term upon ten (10) days written notice to the other party. The Lessee agrees that in the event of such modification of this Agreement by either party as provided above, it shall reimburse the State one hundred percent (100%) of all costs incurred by the State in the performance of its obligations as described in this Agreement.

6. Reimbursement of Costs – Lessee shall reimburse the State in full for all reasonable costs and attorney's fees, including, but not limited to, those charged it by the California Office of the Attorney General, that the State incurs in connection with the defense of any action brought against the State challenging this Agreement or any other matter related to this Agreement or the work performed by the State under this Agreement. In addition, Lessee shall reimburse the State for any court costs and reasonable attorney fees that the State may be required by a court to pay as a result of such action. Lessee may participate in the defense of the action, but its participation shall not relieve it of its obligations under this Paragraph. The provision of this Paragraph shall not apply to any claims, litigation or other actions which may be brought by the Parties against each other and shall not apply to the extent that any such obligation is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement. Nothing in this Paragraph shall be construed to require the State to defend itself against all or any aspect of the challenge to this Agreement or work performed under this Agreement. However, Lessee may take whatever legal action is available to it to defend this Agreement or any work performed under this Agreement against any challenge by a third party, whether or not the State chooses to raise a defense against such a challenge.

7. Records – Upon five (5) business days' notice, the State's records relating to its costs shall be available for the Lessee's audit in the State's office in Sacramento. Said audit shall take place only during regular business hours of the State. Payment of costs by the Lessee shall not constitute a waiver of its rights to audit nor an acknowledgment by the Lessee of the validity of the costs that have been paid. Nothing herein shall be deemed to require the State, its consultants, other contractors and subcontractors to maintain books, records, or documents other than those usually maintained by them, provided that such books, records and documents reasonably segregate and identify the costs for which reimbursement is required hereunder. As used herein, "State's records" include any audit of the consultant by the State or its designated representative as authorized in this Agreement.

8. Paragraphs 4, 7, 8, 9, 10, 11, 13, 15, 16, 18, 19, and 20 of GTC 4/2017, Exhibit C, do not apply to this Reimbursement/Revenue Agreement, and are hereby waived and shall have no force or effect upon this Agreement.

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